

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
 MUR 6087 ) CASE CLOSURE UNDER THE  
 JIM RISCH FOR U S SENATE AND ) ENFORCEMENT PRIORITY SYSTEM  
 R JOHN INSINGER, AS TREASURER )

**GENERAL COUNSEL'S REPORT**

Under the Enforcement Priority System, matters that are low-rated

are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6087 as a low-rated matter.

The complainants in this matter, James D. Hansen and the Idaho Democratic Party, allege that Jim Risch for U.S. Senate Committee and R. John Insinger, in his official capacity as treasurer ("the Committee"), and Right to Life of Idaho, Inc. ("Idaho Right to Life"), a non-profit corporation, may have violated 2 U.S.C. § 441b(a), which prohibits corporations from making contributions or expenditures in connection with federal elections, and federal candidates and committees from knowingly accepting such contributions or expenditures. Specifically, the complainants assert that the Committee paid for and distributed a mailing promoting then-Governor Risch's candidacy for U.S. Senate in envelopes bearing Idaho Right to Life's return address and using Idaho Right to Life's nonprofit bulk mail permit.<sup>1</sup>

Enclosed with the complaint is what appears to be a copy of the mailing, which consists of

<sup>1</sup> The complainants also state that Idaho Right to Life might have engaged in "illegal electioneering." Since the complainants failed to indicate how the mailings related to restrictions pertaining to electioneering communications as a form of a broadcast, cable or satellite communication, (see 2 U.S.C. § 434(f)(3) and 11 C.F.R. § 100.29(a)), we have not addressed this allegation further.

1 the envelope, a letter signed by Mr Risch, and a letter signed by Kerry Uhlenkott supporting  
2 Mr Risch, on what appears to be her personal stationary Both letters bear the disclaimer  
3 "Paid for by Jim Risch for U S Senate "

4 In response, the Committee acknowledges that the envelopes containing the mailing  
5 are stamped with the non-profit bulk mail permit belonging to "the corporate entity"  
6 (presumably, Idaho Right to Life), but maintains that its mail house, which it does not  
7 identify, was in error when it stamped the envelopes with Idaho Right to Life's non-profit  
8 bulk rate permit Although the Committee does not specifically address the issue of how the  
9 error occurred, it states that it paid for all the costs associated with the mailing, including the  
10 postage, which the Committee asserts was at the regular bulk mail rate, as opposed to the  
11 non-profit rate

12 Ms Uhlenkott's response consists of an affidavit, in which she avers that she wrote  
13 the letter alluded to herein in her personal capacity, not as a board member of Idaho Right to  
14 Life, after consulting with legal counsel According to Ms Uhlenkott, she wrote the letter at  
15 Mr Risch's request, and to her understanding it was produced, paid for, and mailed by the  
16 Committee, not Idaho Right to Life

17 The Committee maintains that, despite the mail house's error, the expenses associated  
18 with the mailing were paid for by the Committee, and not Idaho Right to Life <sup>2</sup> We have no  
19 information to the contrary, concerning the Committee's payment of the expenses associated  
20 with the mailing Therefore, in furtherance of the Commission's priorities and resources  
21 relative to other matters pending on the Enforcement docket, the Office of General Counsel

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<sup>2</sup> Neither party has provided information concerning the potential magnitude of the mailing

believes that the Commission should exercise its prosecutorial discretion and dismiss the matter *See Heckler v Chaney*, 470 U S 821 (1985)

**RECOMMENDATION**

The Office of General Counsel recommends that the Commission dismiss MUR 6087, close the file, and approve the appropriate letters

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6/10/09  
Date

BY

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